

JS 44 CAND (Rev. 12/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS ALI ASGHARI, individually, and on behalf of a class of similarly situated individuals		DEFENDANTS VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, AND AUDI AG			
(b) County of Residence of First Listed Plaintiff <u>Los Angeles, CA</u> <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small>		County of Residence of First Listed Defendant <u>Fairfax, VA</u> <small>(IN U.S. PLAINTIFF CASES ONLY)</small>			
<small>(c) Attorneys (First Name, Address, and Telephone Number)</small> Neda Roshanian (SBN 225337); Michael Coats (SBN 258941); Law Offices of Mark Yablonovich; 1875 Century Park E., Ste. 700, Los Angeles, CA 90067; 310-286-0246		<small>NOTE:</small> <small>IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</small>			
<small>Attorneys (If Known)</small> <u>12-2171 JSC</u>					
II. BASIS OF JURISDICTION <small>(Place an "X" in One Box Only)</small>		III. CITIZENSHIP OF PRINCIPAL PARTIES <small>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</small>			
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question <small>(U.S. Government Not a Party)</small>	Citizen of This State <input checked="" type="checkbox"/> PTF <input type="checkbox"/> DEF	Incorporated or Principal Place of Business in This State <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF		
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity <small>(Indicate Citizenship of Parties in Item III)</small>	Citizen of Another State <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF	Incorporated and Principal Place of Business in Another State <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF		
		Citizen or Subject of a Foreign Country <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF	Foreign Nation <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF		
IV. NATURE OF SUIT <small>(Place an "X" in One Box Only)</small>					
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assauk, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 633 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 500 Securities/Commodities/ Exchange
	<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Rel. Inc. Security Act	<input type="checkbox"/> 861 RIA (13951) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(h))
				<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
V. ORIGIN <small>(Place an "X" in One Box Only)</small>					
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation
<small>Cite the U.S. Civil Statute under which you are filing. <i>(Do not cite jurisdictional statutes unless diversity)</i></small> USC § 2301, CA CLRA § 1750, CA Comm. Code § 2313, CA B&P Code § 17200, NY CPDAP Act § 349					
VI. CAUSE OF ACTION <small>Brief description of cause:</small> Class Action for violation of consumer protection statutes.					
VII. REQUESTED IN COMPLAINT:		<input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION <small>UNDER F.R.C.P. 23</small>	DEMANDS <small>Exceeds \$ 5,000,000.00</small>	<small>CHECK YES only if demanded in complaint:</small> JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
VIII. RELATED CASE(S) IF ANY		<small>(See Instructions):</small> JUDGE <u>Donna M. Ryu</u>		<small>DOCKET NUMBER</small> <u>4:12-cv-01156-DMR</u>	
IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2) <small>(Place an "X" in One Box Only)</small>		<input checked="" type="checkbox"/> SAN FRANCISCO/OAKLAND <input type="checkbox"/> SAN JOSE <input type="checkbox"/> EUREKA			

DATE 05/01/2012

SIGNATURE OF ATTORNEY OF RECORD

DOCKET NUMBER 4:12-cv-01158-DMR

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9
 10 Attorneys for Plaintiff Ali Asghari

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 12
 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA—SAN FRANCISCO DIVISION

15 ALI ASGHARI, individually, and on
 16 behalf of a class of similarly situated
 17 individuals,

18 Plaintiff,

19 vs.

20 VOLKSWAGEN GROUP OF
 21 AMERICA, INC., VOLKSWAGEN
 22 AG, AND AUDI AG,

23 Defendant.

24 Case No.:

25 **CLASS ACTION COMPLAINT
 26 FOR:**

- 27 (1) **Violations Of California
 28 Consumer Legal Remedies Act;**
- (2) **Violations Of Unfair Business
 Practices Act;**
- (3) **Violation Of New York
 Consumer Protection From
 Deceptive Acts And Practices
 Act;**
- (4) **Violation Of Magnuson-Moss
 Warranty Act;**
- (5) **Breach Of Express Warranty
 under Cal. Com. Code § 2313;
 and**
- (6) **Violations of Express Warranty
 Pursuant to N.Y. U.C.C. Law
 §§ 2-31.3**

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1 INTRODUCTION

2 1. Plaintiff ALI ASGHARI (“Plaintiff”) brings this action individually
3 and on behalf of all similarly situated persons (“Class Members”) who purchased
4 or leased certain defective Volkswagen or Audi vehicles that were designed,
5 manufactured, distributed, marketed, sold, and leased by Defendants,
6 Volkswagen Group of America, Inc., Volkswagen AG, and Audi AG
7 (collectively “Volkswagen” or “Defendants”).

8 2. Defendants designed, manufactured, distributed, marketed, sold, and
9 leased vehicles equipped with 2.0-liter turbocharged engines (“Class Vehicles”
10 or “Vehicles”)¹ to Plaintiff and Class Members.

11 3. Defendants knew or should have known that the Class Vehicles
12 contain one or more design and/or manufacturing defects, including but not
13 limited to defects contained in the Class Vehicles’ engine that cause it to
14 consume abnormally high rates of oil (the “excessive oil consumption defect.”)

15 4. Motor oil functions as an essential lubricant for the moving parts in
16 internal combustion engines. The oil creates a film separating surfaces of
17 adjacent moving parts to minimize direct contact, thereby decreasing heat caused
18 by friction and reducing wear. Motor oil also has important cleaning and sealing
19 functions, and serves as an important medium for dissipating heat throughout the
20 engine.

21 5. The excessive oil consumption defect causes excessive amount of
22 oil to be consumed within the engine. In the Class Vehicles, the rate of
23 consumption is as high as one (1) quart of oil per 500 miles driven for some
24 Class Members. The excessive oil consumption defect thus requires the addition

25
26 ¹ The Class Vehicles are any 2007 through 2012 model year Audi or
27 Volkswagen vehicles equipped with a 2.0 liter turbocharged engine. On
28 information and belief, these vehicles include, but are not limited to, the
following Audi models: TT, A3, A4, A5, A5 Cabrio, A6, and Q6; and the
following Volkswagen models: GTI, GLI, Tiguan, EOS, Passsat/CC, and Jetta.

1 of substantial amounts of oil between maintenance scheduled oil changes and
2 can result in engine damage.

3 6. The oil consumption defect is a safety concern because it prevents
4 the engine from maintaining the proper level of engine oil, and causes
5 voluminous oil consumption that cannot be reasonably anticipated or predicted.
6 Therefore, this excessive oil consumption defect is unreasonably dangerous
7 because it can cause engine failure while the Class Vehicles are in operation at
8 any time and under any driving conditions or speeds, thereby exposing the Class
9 Vehicle drivers, their passengers and others who share the road with them to
10 serious risk of accidents and injury.

11 7. Prior to purchasing the Class Vehicles, Plaintiff and other Class
12 Members did not know that the Class Vehicles suffered from an excessive oil
13 consumption defect and did not contemplate that the Class Vehicles' engines
14 would be unable to prevent substantial amounts of oil from being consumed due
15 to defects contained therein and thereby requiring costly supplemental oil to be
16 added between scheduled oil changes, as well as other related repairs that can
17 cost hundreds to thousands of dollars.

18 8. Plaintiff is informed and believes and based thereon alleges that
19 Defendants knew or should have known that the Class Vehicles are defective and
20 suffer from the excessive oil consumption defect and are not fit for their intended
21 purpose of providing consumers with safe and reliable transportation.
22 Nevertheless, Defendants have actively concealed and failed to disclose this
23 defect from Plaintiff and the Class Members at the time of purchase or lease and
24 thereafter.

25 9. Defendants knew and concealed the excessive oil consumption
26 defect that is contained in every Class Vehicle, along with the attendant
27 dangerous safety problems and associated costs, from Plaintiff and Class
28 Members at the time of sale and thereafter. This undisclosed defect has caused

1 Plaintiff and prospective class members to experience the excessive oil
2 consumption defect throughout the life of the Class Vehicles, which includes use
3 within the warranty period. Had Plaintiff and the Class Members known about
4 this defect at the time of sale or lease, as well as the associated costs related to
5 this defect, Plaintiff and the Class Members would not have purchased the Class
6 Vehicles or would have paid less for them.

7 10. As a result of their reliance on Defendants' omissions and/or
8 misrepresentation, owners and/or lessees of the Class Vehicles have suffered
9 ascertainable loss of money, property, and/or loss in value of their Class
10 Vehicles.

11 **PARTIES**

12 **PLAINTIFF ALI ASGHARI:**

13 11. Plaintiff ALI ASGHARI is a California citizen who lives in Los
14 Angeles, California. Mr. Asghari leased a new 2010 Audi A5 from Audi dealer,
15 Atlantic Imports, Inc., d.b.a. Atlantic Audi West, in West Islip, New York, on
16 December 29, 2009. Mr. Asghari purchased this vehicle primarily for his
17 personal, family, or household purposes. This vehicle was designed,
18 manufactured, sold, distributed, advertised, marketed, and warranted by
19 Volkswagen.

20 12. Plaintiff on several occasions has paid out of pocket to add
21 supplemental oil between oil changes.

22 13. On or around September 7, 2010, with approximately 8,887 miles
23 on the odometer, Plaintiff visited Audi dealer, Santa Monica Audi, informing the
24 dealer that he had to add oil when the oil light came on.

25 14. On or around August 15, 2011, with approximately 20,116 miles on
26 the odometer, Plaintiff returned to the Audi dealer complaining of excessive oil
27 consumption. In response, the dealer conducted an "oil consumption test" on
28 Plaintiff's vehicle and verified Plaintiff's excessive oil consumption concerns.

1 15. Specifically, the dealer found that Plaintiff's vehicle was consuming
2 0.76 quarts per 1,000 miles driven (or approximately (1) quart per 1300-1400
3 miles) and as a result kept Plaintiff's vehicle over a two week period to conduct
4 engine repairs.

5 16. At all times, Plaintiff, like all Class Members, has driven his
6 vehicle in a foreseeable manner and in the manner in which it was intended to be
7 used.

8 **Defendants:**

9 17. Volkswagen Group of America, Inc. is a corporation organized and
10 in existence under the laws of the State of New Jersey and registered with the
11 California Department of Corporations to conduct business in California. At all
12 times relevant herein, Volkswagen Group of America, Inc. was engaged in the
13 business of designing, manufacturing, constructing, assembling, marketing,
14 distributing, and selling automobiles and other motor vehicles and motor vehicle
15 components in California and throughout the United States of America.

16 18. Volkswagen AG is a foreign corporation headquartered at Berliner
17 Ring 2 38440 Wolfsburg, Federal Republic of Germany. At all relevant times,
18 Volkswagen AG took part in designing, engineering, manufacturing, testing,
19 marketing, supplying, selling, and distributing motor vehicles, including Class
20 Vehicles, in San Francisco County, California, and throughout the United States
21 of America. Through its wholly owned subsidiaries and agents, Volkswagen AG
22 markets its products in a continuous manner in the United States, including
23 California. Volkswagen AG maintains a Detroit Office and a Volkswagen AG
24 Investor Relations office in Herndon, Virginia.

25 19. Audi AG is a foreign corporation located at Auto-Union-Str. 2 D-
26 85045, Ingolstadt, Germany. At all relevant times, Audi AG took part in
27 designing, engineering, manufacturing, testing, marketing, supplying, selling,
28 and distributing motor vehicles, including Class Vehicles, in San Francisco

1 County, California, and throughout the United States of America. Through its
2 subsidiary, Audi of America, LLC, Audi AG markets its products in a
3 continuous manner in the United States, including California. Audi of America,
4 LLC is the entity through which Audi AG sells Audi Vehicles in the United
5 States. Audi AG maintains its principle place of business in Herndon, Virginia.

6 **JURISDICTION**

7 20. This is a class action.

8 21. Members of the Proposed Class are citizens of states different from
9 the home states of Defendants.

10 22. On information and belief, aggregate claims of individual Class
11 Members exceed \$5,000,000.00, exclusive of interests and costs.

12 23. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

13 **VENUE**

14 24. Volkswagen, through its business of distributing, selling, and
15 leasing the Class Vehicles, has established sufficient contacts in this district such
16 that personal jurisdiction is appropriate. Defendant is deemed to reside in this
17 district pursuant to 28 U.S.C. § 1391. Plaintiff's counsel's Declaration, as
18 required under California Civil Code section 1780 (d) is also attached as Exhibit
19 1.

20 25. Venue is proper in this District under 28 U.S.C. § 1391 (a).

21 **FACTUAL ALLEGATIONS**

22 26. For years, Volkswagen has designed, manufactured, distributed,
23 sold, and leased the Class Vehicles. Upon information and belief, it has sold,
24 directly or indirectly through dealers and other retail outlets, hundreds of
25 thousands of Class Vehicles nationwide.

26 27. The Class Vehicles contain one or more design and/or
27 manufacturing defects, including but not limited to defects contained in the Class
28 Vehicles' engines that cause them to experience abnormally high rates of oil

1 consumption (the "excessive oil consumption defect.")

2 28. Plaintiff is informed and believes and based thereon alleges that
 3 Volkswagen acquired its knowledge of the excessive oil consumption defect
 4 through sources not available to Class Members, including but not limited to pre-
 5 release testing data, early consumer complaints about the excessive oil
 6 consumption to Defendant and its dealers about the Class Vehicles as well as
 7 other earlier model year versions of such vehicles, testing conducted in response
 8 to those complaints, aggregate data from Volkswagen's dealers, and from other
 9 internal sources.

10 29. Volkswagen has a duty to disclose the excessive oil consumption
 11 defect and the associated out-of-pocket repair costs to Class Vehicles owners,
 12 among other reasons, because the defect poses an unreasonable safety hazard;
 13 because Volkswagen had and has exclusive knowledge or access to material
 14 facts about the Class Vehicles and engines that were and are not known or
 15 reasonably discoverable by Plaintiff and Class Members; and because
 16 Volkswagen has actively concealed the excessive oil consumption defect from its
 17 customers.

18 30. Hundreds, if not thousands, of purchasers and lessees of the Class
 19 Vehicles have experienced the excessive oil consumption defect. Complaints
 20 filed by consumers with the NHTSA and posted on the Internet demonstrate that
 21 the defect is widespread. The complaints also indicate Volkswagen's awareness
 22 of the defect and its potential danger (note that spelling and grammar mistakes
 23 remain as found in the original):

24 • NHTSA Complaint: [2007 AUDI A4] AFTER
 25 LEASING THE CAR 2 MONTHS LATER I HAD
TO ADD OIL TO IT. THE ENGINE BURNS OIL
LIKE CRAZY. 1 QUART OF OIL PER MONTH
TO MONTH AND A HALF. THE ENGINE OIL
WARNING LIGHT HAS COME SEVERAL TIMES
CAUSING ME TO PULL OFF THE ROAD INTO
THE CLOSEST GAS STATION TO BUY SOME
OIL. DEPENDING OF WHEN IT HAPPENS, THIS

1 HAS BEEN SOMEWHAT STRESSFUL. I HAVE
 2 BEEN TOLD THIS IS NORMAL. I DO NOT
 3 THINK SO. IF THEY HAD TOLD ME THIS, I
 4 WOULD NOT HAVE LEASED THIS CAR! *TR

- 5 • NHTSA Complaint: [2009 AUDI A4] THIS AUDI
 6 WAS A LEMON FROM THE START AND
 7 BOTCHED REPAIRS AT THE DEALER HAVE
 8 ONLY MADE IT WORSE. ONE THE 2ND DAY
 9 WE OWNED THE CAR THE OIL LIGHT CAME
 10 ON AND WE HAD TO RETURN IT TO THE
 11 DEALER FOR MORE OIL. OVER THE NEXT 2
 12 YEARS THE CAR BURNED AN EXCESSIVE
 13 AMOUNT OF OIL STARTING AT 1 QRT EVERY
 14 2500 MILES AND DETERIORATING TO 1 QRT
 15 EVERY 800 MILES. ALL ALONG THE DEALER
 16 TOLD US THIS WAS "NORMAL". IN MAY 2011,
 17 DEALER TOLD US THAT AUDI HAD
 18 INITIATED A TESTING PROGRAM AND IF THE
 19 CAR FAILED THEY WOULD DO SOMETHING.
 20 IN JUNE 2011, THE CAR FAILED TEST AND
 21 THE DEALER KEPT THE CAR FOR 3+ WEEKS
 22 CONDUCTING MAJOR ENGINE SURGERY.
- 23 • NHTSA Complaint: I RECENTLY PURCHASED A
 24 2008 AUDI A4 2.0 WITH APPROXIMATELY
 25 37,000 MILES ON IT. I'VE DRIVEN THE CAR
 26 LESS THAN 3000 MILES AND HAD TO ADD 1
 27 QUART OF OIL EVERY MONTH OF
 28 OWNERSHIP (3). AUDI DEALERSHIP SAYS
 THIS IS NORMAL. LIKE THE PREVIOUS
 COMPLAINT LISTED ON THIS TOPIC, I TOO
 HAVE SEE A NUMBER OF BLOGS ON THE
 SUBJECT OF THE 2008 A4'S HAVING ISSUES
 WITH EXCESSIVE OIL CONSUMPTION. I'VE
 ALSO SEEN MENTION OF A TECHNICAL
 SERVICE BULLETIN BEING ISSUED BY AUDI
 ON THIS BUT I'VE YET TO FIND IT. *TR
- 29 • NHTSA Complaint: I PURCHASED THE A4
 30 USED WITH ONLY 19K MILES ON IT. I
 31 NOTICED THAT AFTER DRIVING 1,000 MILES,
 32 1 QUART OF OIL WAS GONE. I FILLED IT
 33 BACK UP AND DROVE ANOTHER 1,000 MILES.
 34 THE SAME THING. I HAVE A FAMILY
 35 RELATIVE WHO OWNS A VW PASSAT WITH
 36 THE SAME ENGINE AND HER CAR BURNED
 37 OIL TOO. AUDI SAYS THAT THIS IS A
 38 COMMON PROBLEM AND THAT IT'S
 39 SOMETHING THE OWNER WILL HAVE TO GET
 40 USED TO. THIS IS NOT NORMAL, SOMETHING
 41 IS WRONG WITH THE ENGINES. THERE ARE
 42 SO MANY FORUMS AND SITES DEDICATED
 43 TO THE VW/AUDI 2.0T ENGINES CONSUMING
 44 OIL. *KB

- 1 • NHTSA Complaint: PURCHASED 2008 AUDI
2 A4 NEW FROM DEALERSHIP IN OCTOBER
3 2007. TWO MONTHS AFTER PURCHASE,
4 NOTICE OIL CONSUMPTION PROBLEM AT
5 1QT EVERY 1,000 MILES. DEALERSHIP SAYS
6 THIS IS NORMAL BUT MY MECHANIC SAID IT
7 IS NOT. WITH THE HELP OF A PRO-BONO
8 ATTORNEY, CONTACTED AUDI AND
9 DEMANDED REPAIR AT 12,000 MILES. AUDI
10 REPLACED RINGS AND CAR WAS FINE FOR
11 24,000 MILES. AT 36,000 MILES, LOW OIL
12 LIGHT CAME ON - 1 QT LOW AGAIN. HAD OIL
13 CHANGED BY MY MECHANIC AND TWO
14 DAYS LATER A NEW PROBLEM - LOW OIL
15 PRESSURE LIGHT COMES ON. HAD CAR
16 TOWED TO DEALERSHIP AND THEY FOUND
17 NOTHING WRONG WITH CAR (NO CODES,
18 DRIVES FINE). I DEMAND THROUGH AUDI AN
19 OIL PRESSURE TEST. TEST CAME BACK
20 NORMAL. THEY TOLD ME TO DRIVE THE CAR
21 AND THAT THERE IS NOTHING WRONG WITH
22 IT. THE LOW OIL PRESSURE LIGHT IS STILL
23 COMING ON EVERY 20 MINUTES OF DRIVING.
24 THE CAR GOES BACK IN THE SHOP AGAIN
25 THIS WEEK. CAR IS OBVIOUSLY DEFECTIVE
26 AND I AM CONCERNED ABOUT MAJOR
27 ENGINE DAMAGE. *TR
28
- 15 • NHTSA Complaint: VW PASSAT 2008, LOW
16 OIL LIGHT COME ON BEFORE SCHEDULE OIL
17 CHANGE FREQUENTLY. THE CAR BURNS OIL
18 BECAUSE OF THE TURBO ENGINE. AND THE
19 EMISSION SYSTEM HAS A VALVE FAILURE
20 TOO. *TR
21
- 19 • NHTSA Complaint: MY '08 PASSAT WITH A 2.0
20 T ENGINE BURNS THROUGH A GREAT DEAL
21 OF OIL. ABOUT 1/2 LITER PER 1,000 MILES. IT
22 IS A NEW CAR (NOW 28,000 MILES) AND
23 SHOULD NOT BURN OIL! VW STATES THIS
24 OIL CONSUMPTION IS NORMAL, BUT I
25 DISAGREE. I LEASE THE CAR AND HAVE HAD
26 ALL MAINTENANCE DONE AT THE DEALER. I
27 MUST FREQUENTLY ADD OIL TO THE
28 ENGINE AND HAVE BROUGHT IT IN TO BE
 SERVICED FOR THIS OIL CONSUMPTION
 ISSUE SEVERAL TIMES. FROM RESEARCH
 DONE ONLINE, THIS IS NOT A PROBLEM
 UNIQUE TO ME. PLEASE HELP! *TR
- 26 • NHTSA Complaint: [2008 VW PASSAT] OWNED
27 THE CAR FOR 9 MONTHS . . . CAR BURNS
28 EXCESSIVE OIL. NEED TO ADD OIL BETWEEN
 SCHEDULED OIL CHANGES. IN APRIL 2010,
 OIL PRESSURE LIGHT CAME ON. DEALER

ADDED 2 QTS OF OIL AND TANK WAS STILL NOT FULL. STILL HAD 1,000 MILES TO GO BEFORE NEXT SCHEDULED OIL CHANGE. HAVE HAD OIL ADDED ON TWO OTHER OCCASIONS BETWEEN OIL CHANGES. 4. CAR IS SLUGGISH, ESPECIALLY WHEN GOING UP HILLS. NO RESPONSE OR RESOLUTION FOR THIS, BUT THE CAR HAS A TURBO ENGINE
NOTE: THIS CAR HAS ONLY BEEN SERVICED BY VW DEALERSHIPS. *TR

- NHTSA Complaint: [2008 VW GTI] THE ENGINE CONSUMES 3-4 EXTRA QUARTS OF SYNTHETIC OIL BETWEEN 5,000 MILE OIL CHANGE INTERVALS AS INSTRUCTED BY MANUFACTURER. ITS A 2.0T ENGINE THAT USES SYNTHETIC OIL. I HAD PREVIOUS VERSION OF 1.8T AND IT DID NOT CONSUME ANY OIL AT ALL. IF THE OIL IS NOT ADDED, THE CAR WOULD TAKE 2-3 TIMES TO START UP (DOESN'T MATTER WHICH SEASON) AND ITS HORRIBLE ON GAS MILEAGE. WENT TO DEALERSHIP 5 TIMES ALREADY AND EVERY TIME THEY TELL ME THAT THIS IS NORMAL CONSUMPTION. I INFORMED THAT I HAVE TO ADD OIL TO KEEP THE CAR GOING, THEY TOLD ME THAT ITS NOT THEIR PROBLEM UNTIL THE ENGINE CEASES AT WHICH TIME THEY WILL LOOK INTO IT. AS A CONSUMER, I HAVE NO CHOICE BUT TO KEEP ON ADDING THE SYNTHETIC OIL. I THOUGHT THAT SYNTHETIC OIL IS HARD TO BREAK DOWN AND YES I USED THE RECOMMENDED GRADE. VW IS TAKING ME FOR A RIDE. DOES ANYBODY HAVE ANY SUGGESTIONS? *TR
- NHTSA Complaint: I HAVE AN AUDI A4 2007 . THIS CAR BURNS OIL THROUGH EVERY 1200-1500 MILES. AUDI IS AWARE OF THIS PROBLE . . . I AM NOT THE ONLY ONE WHO HAS HAD THE SAME ISSUES. THIS YEAR OF CAR IS UNSAFE, AND SHOULD BE RECALLED TO FIX THE OIL CONSUMPTION ISSUES BEFORE THE DAMAGE OCCURS TO THE ENGINES. *TR
- NHTSA Complaint: [2007 AUDI A4] SINCE I BOUGHT MY AUDI, I HAVE HAD TO PUT OIL IN IT MANY TIMES, AND HAVE BEEN TOLD THIS IS NORMAL FOR A TURBO. I THINK THAT IS CRAZY, AND EVEN AN AUDI SERVICE MAN TOLD ME NOT ALL OF THE TURBOS DO THAT. I HAVE ALSO HAD AN ISSUE WITH THE CAR SEEMING TO LOSE POWER AND JERK ABOUT TWICE A MONTH

1 WHEN I AM USUALLY AROUND 70 MPH. IT'S
 2 ALMOST AS IF THE IGNITION IS TURNED OFF
 3 FOR 1 SECOND, THEN IT ACTS FINE. THIS IS
 4 VERY STARTLING WHEN IT HAPPENS. *TR

5

- 6 • Online Complaint: I have a 2008 Audi A4 with oil
 7 consumption problems. It burns one quart of oil every
 8 1,000 miles. The dealer said that this is a common
 9 problem and it has no solution. They said that I
 10 would have to get used to it. This is extremely
 11 common in the 2.0T engines throughout Audi and
 12 VW.

13 There are many websites and forums dedicated to this
 14 topic. Audi needs to issue a recall.

15

- 16 • Online Complaint: I bought an Audi A5 in march
 17 2011, 2 ltr TFSI petrol model. Yes, this drinks oil like
 18 nothing. So far it has done only 2000 miles and had
 19 to top up the oil for 4 times...which is nearly 4 lts.
 20 This is way above their specifications. They changed
 21 the crank valve but still the problem exists. Audi
 22 admits that there is a problem with TFSI 2 ltr petrol
 23 engines. But they dont' admit that there is a problem
 24 in my car.....I know one dealer in UK went to the
 25 extent of exchanging the vehicle and replaced with a
 26 brand new one again. Another, they kept on sending
 27 oil cans to their resident for replacements. All these
 28 shows that there is a problem with these engines.

29 Clever thing they do is, they do the oil test and say its
 30 within your specifications. They never admit until
 31 your warrenty period is over. I think this is a world
 32 wide issue as mine is UK base. You need to push
 33 audi dealer to do somehting about it or contact your
 34 solicitors. Its no joke....there is a problem in these
 35 engines and its your money!!

36

- 37 • Online Complaint: I bought an Audi 3 in July 2010.
 38 After only a few months, I already noticed a problem
 39 with the oil. There was always a red warning light.
 40 After referring the problem to Germany, they
 41 replaced all the piston rings and engine gasket. They
 42 have also replaced the battery, and recently, the
 43 ignition switch, because the car would not start after
 44 several attempts.

45 It was very embarrassing to have an Audi, which
 46 only over a year old, to be towed because it won't
 47 start. With all these abnormal malfunctions in a 16
 48 month old car, it is obviously a lemon. Of course, the
 49 car dealer would not admit that it is defective. I am
 50 demanding a replacement, but they refused. I was
 51 informed that the 2-year warranty covers only parts
 52 and service, but not replacement . It is totally

1 disappointing to have a car that claims to have high
 2 end technology, but would not start! Is there no
 3 manufacturer's warranty from Audi? I no longer want
 4 to use a car that can compromise my safety!

- 5 • Online Complaint: I purchased a 2007 Audi A4 2.0
 6 Turbo in May of this year with 40k miles on it. Vet
 7 checked clean. The oil light has come on several
 8 times, I had it checked by Audi and was told "The car
 9 is within spec to burn 1 qt per 1,000 miles". I
 10 replaced the battery and now fighting with the tail
 11 light.
- 12 • Online Complaint: I have had repeated mechanical
 13 problems with my 2009 Audi A-4 from the inception
 14 of the lease. . . I need to monthly have my oil
 15 "topped" off, and I am being inconvenienced by
 16 having to drive to the dealership monthly, to have oil
 17 put into the vehicle. That is very frustrating, and I am
 18 putting unnecessary mileage on my vehicle, just to
 19 have it the oil level maintained at the proper level.
- 20 • Online Complaint: We leased a 2008 Audi A4, I
 21 noticed that every 500-700 miles, I would have to
 22 add a quart of oil to it. I called Audi, and have taken
 23 it in several times for this issue, all to just be told that
 24 every Audi 2.0 turbo, would have to have oil added
 25 to it, there would be nothing anyone could do. I have
 26 had this vehicle at the dealership several times over
 27 this, and was constantly told to "stop by we will add
 28 oil to it" (that is not convenient at all.) Why should I
 have to have it constantly filled, its a 2008 "luxury"
 vehicle.
- Online Complaint: I purchased a 2010 Audi A4 on
 May 24, 2010 with 22 miles on it. I have had to
 return the vehicle to the dealer for a quart of oil at
 1800 miles, 3100 miles, and again at 4300 miles. The
 dealer is telling me that it is within their
 specifications that the car burns 1 quart of oil every
 1000 miles. The car is burning excessive oil and they
 want me to accept that as normal. When I know it
 really means early signs of more serious engine
 problems.

29 Audi markets this vehicle as not requiring an oil
 30 change but every 10,000 miles. It is contradictory to
 31 require oil every 1300 miles, but doesn't need an oil
 32 change but every 10,000 miles. I believe their
 33 marketing tactics are misleading. Based upon my
 34 driving pattern and the need for this vehicle to require
 35 a quart of oil every 1300 - 1800 I have to take it to
 36 the dealer 3 - 4 weeks (once a month) which poses as
 37 a great inconvenience. Additionally, I don't feel safe
 38 traveling long distances in the car because of the

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 LOS ANGELES

1 frequent replacement of oil. Not to mention the
 2 specialty oil that it requires.

3

- 4 • Online Complaint: I bought a demo A4 Audi in June
 5 07 with 7,000 miles on it. Since I first had the card it
 6 burned a lot of oil. This is my third Audi I have
 7 owned and thought it was strange that about every
 8 1,000 miles I had to add a quart of oil. First the Audi
 9 serviceman said 2,000 miles was normal. I began to
 10 keep record and this last time I went 1,673 miles and
 11 went through 3 quarts of oil which averages out to
 12 557 miles per quart. I complained to the service
 13 department and they ordered an oil consumption test
 14 and found it burned 7/10 of a quart of oil for 1,000
 15 miles which now they say is acceptable standards by
 16 Audi.

17 I own a Quaker State oil change and three of our
 18 technicians have said they never seen a car burn this
 19 much oil and claims there is a problem with the
 20 engine. Audi will not do anything about the problem.
 21 The other day driving the car it lost power going up a
 22 hill and the engine light flashed on then everything
 23 was ok. I am a 53 year old women on the road
 24 driving by myself afraid something will happen to
 25 the car. Is there any legal action I can take to help
 26 resolve this problem?

27 The economic damage is that I paid \$40,000 for a car
 28 that has an engine problem. I am fearful of driving
 29 the car especially when I have to drive out of state
 30 alone.

31

- 32 • Online Complaint: My 2008 Audi A4 burns oil at a
 33 rate of 1 quart per 1000 miles. I took it back to
 34 Tischer Audi three times after the oil pressure
 35 warning indicator came on at 6000, 10000 and 14000
 36 miles. Each time they merely checked for leaks and
 37 reported that it was operating normally. On the third
 38 occasion Audi began a 2 part oil burn off test which
 39 involved adding a precise measure of oil and required
 40 that I return the car after 600 miles to complete the
 41 test. I returned the car as directed and after 8 days my
 42 Audi was returned to me with a finding that it had
 43 burned off 0.57 quarts of oil. Tischer Audi informed
 44 me that this was well within Audi specifications.
 45 Recently I expressed my feelings to Audi Customer
 46 Relations that this problem is indicative of poor
 47 workmanship and contrary to the advanced
 48 engineering that they advertise.

49 I'm disappointed that Audi is selling a car with a
 50 problematic engine such as this that forces the owner
 51 to keep a watchful eye on the oil level in order to
 52 avoid a catastrophe which should never be a concern.

- 1 • Online Complaint: I purchased a brand new 2010 A6
2 2.0 T in Oct. 2009. I have had the car since then and
3 encountered some odd problems in the past 3 to 6
4 months. Initially, the car used to burn the engine oil
5 faster than usual since I would have to top up the oil
6 level almost every month, which I found really weird.
7 A few months ago, the car started to basically shake
8 when I would barely be driving at 80 km per hour.
- 9 • Online Complaint: I've seen other posts regarding
10 the excessive oil consumption issue and we have the
11 [2006 Passat 2.0T] car in the shop (again) for another
12 check. Our car has ~40K miles and has had this issue
13 since new. We just keep adding oil, 2 quarts at a time
14 when the emergency light goes on.

15 They have performed oil consumption tests 2x and do
16 not see any issues. However, this issue seems
17 intermittent because we find that driving the car
18 ~2000 miles can burn a few quarts of oil. There's no
19 hint of oil in our driveway.

- 20 • Online Complaint: [2008 VW Jetta] I have had the
21 exact same issues, 3 oil test, rings and seal replaced,
22 same issue still, more test and a year later still
23 waiting a response from VW. I use about 3 litres
24 (quarts) of oil between changes and have even run
25 out a couple of times. I love my car but am getting a
26 little frustrated. The latest "wet & dry" test revealed
27 nothing. At one point it was suggested a new engine,
28 but if they all have the same issue what is the point.
My car by the way is an 08' Jetta 2.0T.
- 29 • Online Complaint: My 2006 Passat 2.0T uses about
30 1 qt of oil every 1200-1500 miles. The dealer claims
31 this is "normal". At over \$7 per qt for synthetic oil, I
32 don't consider it normal. It's no wonder they only
33 require oil changes every 10K. By then, you've nearly
34 replaced the oil twice.

35 Does anyone know of a recall, class action suit, or fix
36 for this.

- 37 • Online Complaint: [2008 VW EOS] Dropping a
38 \$100.00 every 2 months on a synthetic oil change for
39 an 08 Eos is a little pricey. If you have to add a liter
40 of oil every 1000 kilometers then the motor has a
41 design flaw. Volkswagen should step up to the plate
42 and make it right.

43 31. When owners or lessees of Class Vehicles specifically complain to
44 Volkswagen or its dealers about the excessive oil consumption problem,
45 Volkswagen's policy is to deny that there is a known problem and to assert that

1 losing as much as one (1) quart of oil per 1,000 miles driven is normal!

2 32. Customers have reported the excessive oil consumption defect in the
3 Class Vehicles to Volkswagen directly and through its dealers. Defendants are
4 fully aware of the oil consumption defect contained in the Class Vehicles.
5 Despite this, Defendants have failed to disclose and actively concealed the
6 existence and nature of the defect from Plaintiff and the Class Members at the
7 time of purchase and thereafter. Specifically, Defendants have:

- 8 (a) failed to disclose, at and after the time of purchase and
9 thereafter, any and all known material defects or material
10 nonconformities of the Class Vehicles, including the
11 excessive oil consumption defect and, among others, the
12 frequent supplemental oil costs between regularly scheduled
13 oil changes;
- 14 (b) failed to disclose at the time of purchase that the Class
15 Vehicles and their engines were not in working order, were
16 defective, and were not fit for their intended purpose; and
- 17 (c) failed to disclose or actively concealed the fact that the Class
18 Vehicles and their engines were defective, despite the fact that
19 Defendants learned of such defects as early as, if not before,
20 the first Class Vehicles were sold.

21 33. Defendants have caused Plaintiff and Class Members to expend
22 money at its dealerships or other third-party repair facilities and/or take other
23 remedial measures related to the excessive oil consumption defect in the Class
24 Vehicles such as carrying containers of oil supply with them at all times.

25 34. Defendants have not recalled the Class Vehicles to repair the
26 defective engines, and have not offered to reimburse Class Vehicle owners and
27 leaseholders who incurred costs relating to excessive oil consumption and related
28 problems.

1 35. Plaintiff and Class Members are reasonable consumers and do not
 2 expect their vehicles to require the addition of several quarts of oil between
 3 regularly scheduled oil changes.

4 36. Plaintiff and Class Members expect and assume that Defendants will
 5 not sell or lease vehicles with known defects, such as the excessive oil
 6 consumption defect, and will disclose any such defects to its consumers before
 7 they purchase the Class Vehicles. They do not expect Defendants to fail to
 8 disclose the excessive oil consumption defect to them, or to continually deny the
 9 defect.

10 37. Consequently, Class Members have not received the value for which
 11 they bargained when they purchased or leased the Class Vehicles.

12 38. As a result of the oil consumption defect, the value of the Class
 13 Vehicles has diminished, including without limitation the resale value of the
 14 Class Vehicles.

15 TOLLING OF THE STATUTE OF LIMITATIONS

16 39. Because the defects in the design or manufacturer of the Class
 17 Vehicles and their engines cannot be detected until the vehicle has been driven
 18 and begins to consume excessive oil, Plaintiff and the Class Members were not
 19 reasonably able to discover the problem until after purchasing or leasing the
 20 Class Vehicles, despite their exercise of due diligence.

21 40. Plaintiff and the Class Members had no realistic ability to discern
 22 that the Class Vehicles and their engines are defective until their oil levels began
 23 dropping. In addition, despite their due diligence, Plaintiff and the Class
 24 Members could not reasonably have been expected to learn or discover that they
 25 were deceived and that material information concerning the Class Vehicles and
 26 their oil consumption issues were concealed from them. Therefore, the
 27 discovery rule is applicable to the claims asserted by Plaintiff and the Class
 28 Members.

41. In addition, even after class members contacted Volkswagen and/or its authorized dealers for vehicle repairs concerning the defective nature of the Class Vehicles, Plaintiff and Class Members were routinely told by Volkswagen and/or through its authorized agents for vehicle repairs that the Class Vehicles are not defective and that the oil consumption was within acceptable limits.

42. Any applicable statute of limitation has therefore been tolled by Volkswagen's knowledge, active concealment, and denial of the facts alleged herein. Volkswagen is further estopped from relying on any statute of limitation because of its concealment of the defective nature of the Class Vehicles and their engines.

CLASS ACTION ALLEGATIONS

43. Plaintiff brings this lawsuit as a class action on behalf of himself and all others similarly situated as members of the proposed Plaintiff Class pursuant to Federal Rules of Civil Procedure 23(a), (b)(3), and/or (b)(2). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

44. The Class and Sub-Class are defined as:

Class: All current and former owners or lessees of any 2007 through 2012 model year Audi or Volkswagen vehicles equipped with a 2.0 liter turbocharged engine ("the Nationwide Class").

California Sub-Class: All Members of the Nationwide Class who reside in the state of California (“the California Sub-Class”).

New York Sub-Class: All Members of the Nationwide Class who purchased the Class Vehicles in the state of New York (“the New York Sub-Class”).

45. Excluded from the Class and Sub-Class are: (1) Defendants, any entity or division in which Defendants have a controlling interest, and its legal

1 representatives, officers, directors, assigns, and successors; (2) the Judge to
2 whom this case is assigned and the Judge's staff; and (3) those persons who have
3 suffered personal injuries as a result of the facts alleged herein. Plaintiff reserves
4 the right to amend the Class and Sub-Class definitions if discovery and further
5 investigation reveal that the Class and Sub-Class should be expanded or
6 otherwise modified.

7 46. Numerosity: Although the exact number of Class Members is
8 uncertain and can only be ascertained through appropriate discovery, the number
9 is great enough such that joinder is impracticable. The disposition of the claims
10 of these Class Members in a single action will provide substantial benefits to all
11 parties and to the Court. The Class Members are readily identifiable from
12 information and records in Defendants' possession, custody, or control, as well
13 as from records kept by the Department of Motor Vehicles of various states.

14 47. Typicality: The claims of representative Plaintiff are typical of the
15 claims of the Class in that the representative Plaintiff, like all Class Members,
16 purchased and leased Class Vehicles designed, manufactured, and distributed by
17 Volkswagen in which the engines were defective. The representative Plaintiff,
18 like all Class Members, has been damaged by Defendants' misconduct in that he
19 has incurred or will incur the cost of purchasing extra synthetic motor oil to
20 replace the oil consumed by the defective engine. Furthermore, the factual bases
21 of Volkswagen's misconduct are common to all Class Members and represent a
22 common thread of fraudulent, deliberate, and negligent misconduct resulting in
23 injury to all Class Members.

24 48. Commonality: There are numerous questions of law and fact
25 common to Plaintiff and the Class that predominate over any question affecting
26 only individual Class Members. These common legal and factual issues include
27 the following:

28 (a) Whether the Class Vehicles and their engines are defectively

designed or manufactured such that they are not suitable for their intended use;

- (b) whether the fact that the Class Vehicle suffer from an excessive oil consumption defect would be considered material by a reasonable consumer;
- (c) whether as a result of Defendant's concealment or failure to disclose material facts, Plaintiff and Class Members acted to their detriment by purchasing Class Vehicles manufactured by Defendants;
- (d) Whether Defendant was aware of the excessive oil consumption defect
- (e) whether the excessive oil consumption defect constitutes an unreasonable safety risk;
- (f) whether Defendants breached the express warranties with respect to the Class Vehicles;
- (g) whether Defendants have a duty to disclose the defective nature of the Class Vehicles and their excessive oil consumption defect to Plaintiff and Class Members;
- (h) whether Plaintiff and the other Class Members are entitled to equitable relief, including but not limited to a preliminary and/or permanent injunction; and
- (i) Whether Defendant violated the consumer protection statutes of California and New York when it sold to consumer Class Vehicles that suffered from the excessive oil consumption defect.

26 49. Adequate Representation: Plaintiff will fairly and adequately
27 protect the interests of the Class Members. Plaintiff has retained attorneys
28 experienced in the prosecution of class actions, including consumer and product

defect class actions, and Plaintiff intends to prosecute this action vigorously.

50. Predominance and Superiority: Plaintiff and the Class Members have all suffered and will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class Members' claims, it is likely that only a few Class Members could afford to seek legal redress for Defendants' misconduct. Absent a class action, Class Members will continue to incur damages, and Defendants' misconduct will continue without remedy. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants and will promote consistency and efficiency of adjudication.

FIRST CAUSE OF ACTION

(Violation of California's Consumer Legal Remedies Act,

California Civil Code § 1750, *et seq.*)

51. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

52. Plaintiff brings this cause of action on behalf of himself and on behalf of the members of the Nationwide Class, or, in the alternative, on behalf of the members of the California Sub-Class.

53. Defendants are “persons” as defined by California Civil Code § 1761(c).

54. Plaintiff and Class Members are “consumers” within the meaning of California Civil Code § 1761(d).

55. By failing to disclose and concealing the defective nature of the

1 Class Vehicles and their engines from Plaintiff and prospective Class Members,
2 Defendants violated California Civil Code § 1770(a), as it represented that its
3 Class Vehicles and their engines had characteristics and benefits that they do not
4 have, and represented that its Class Vehicles and their engines were of a
5 particular standard, quality, or grade when they were of another. *See* Cal. Civ.
6 Code §§ 1770(a)(5) & (7).

7 56. Defendants' unfair and deceptive acts or practices occurred
8 repeatedly in Defendants' trade or business, were capable of deceiving a
9 substantial portion of the purchasing public, and imposed a serious safety risk on
10 the public.

11 57. Defendants knew that its Class Vehicles and their engines suffered
12 from an inherent defect, were defectively designed or manufactured, would fail
13 prematurely, and were not suitable for their intended use.

14 58. Defendants were under a duty to Plaintiff and the Class Members to
15 disclose the defective nature of the Class Vehicles and their engines and/or the
16 associated maintenance costs because:

- 17 (a) Defendants were in a superior position to know the true state
18 of facts about the safety defects contained the Class Vehicles
19 and their engines;
- 20 (b) Plaintiff and the Class Members could not reasonably have
21 been expected to learn or discover that their engines have a
22 dangerous safety defect until after they purchased the Class
23 Vehicles; and
- 24 (c) Defendants knew that Plaintiff and the Class Members could
25 not reasonably have been expected to learn about or discover
26 the safety defect.

27 59. In failing to disclose the excessive oil consumption defect,
28 Defendants have knowingly and intentionally concealed material facts and

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LOS ANGELES

1 breached their duty not to do so.

2 60. The facts concealed or not disclosed by Defendants to Plaintiff and
3 the Class Members are material in that a reasonable person would have
4 considered them to be important in deciding whether or not to purchase
5 Defendants' Class Vehicles, or to pay less for them. Had Plaintiff and other
6 Class Members known that the Class Vehicles' contained safety defects in the
7 engines that would cause oil to be consumed at rates of up to one (1) quart per
8 500 miles, thus requiring the addition of substantial amounts of oil between
9 scheduled oil changes, they would not have purchased the Class Vehicles or
10 would have paid less for them.

11 61. Plaintiff and the Class Members are reasonable consumers who do
12 not expect their engines to consume substantial amounts of oil. Plaintiff and
13 Class Members do not expect to have to purchase and add costly synthetic motor
14 oil, sometimes in quantities of one (1) quart of oil per 500 miles driven. Plaintiff
15 and Class Members further expect and assume that Volkswagen will not sell or
16 lease vehicles with known safety defects, such as the excessive oil consumption
17 defect, and will disclose any such defect to its consumers when it learns of the
18 defect.

19 62. As a result of Defendants' misconduct, Plaintiff and Class Members
20 have been harmed and have suffered actual damages.

21 63. As a direct and proximate result of Defendants' unfair or deceptive
22 acts or practices, Plaintiff and Class Members have suffered and will continue to
23 suffer actual damages.

24 64. Plaintiff and the Class are entitled to equitable relief.

25 65. Plaintiff has provided all Defendants with notice of their alleged
26 violations of the CLRA pursuant to California Civil Code § 1782(a). If, within
27 30 days of the date of the notification letter, Defendants fail to provide
28 appropriate relief for its violation of the CLRA, Plaintiff will amend this

1 Complaint to seek monetary, compensatory, and punitive damages, in addition to
2 the injunctive and equitable relief that he seeks now.

3 **SECOND CAUSE OF ACTION**

4 (Violation of California Business & Professions Code §§ 17200, *et seq.*)

5 66. Plaintiff hereby incorporates by reference the allegations contained
6 in the preceding paragraphs of this Complaint.

7 67. Plaintiff brings this cause of action on behalf of himself and on
8 behalf of the Nationwide Class, or, in the alternative, on behalf of the California
9 Sub-Class.

10 68. California Business & Professions Code § 17200 prohibits acts of
11 “unfair competition,” including any “unlawful, unfair or fraudulent business act
12 or practice” and “unfair, deceptive, untrue or misleading advertising.”

13 69. Defendants knew that the Class Vehicles and their engines suffered
14 from an inherent defect that caused excessive oil consumption, were defectively
15 designed or manufactured, and were not suitable for their intended use.

16 70. In failing to disclose the excessive oil consumption defect,
17 Defendants have knowingly and intentionally concealed material facts and
18 breached their duty not to do so.

19 71. Defendants were under a duty to Plaintiff and the Class Members to
20 disclose the defective nature of the Class Vehicles and their defective engines
21 because:

- 22 (a) Defendants were in a superior position to know the true state
23 of facts about the safety defect in the Class Vehicles and their
24 engines;
- 25 (b) Defendants made partial disclosures about the quality of the
26 Class Vehicles without revealing the defective nature of the
27 Class Vehicles and their engines; and
- 28 (c) Defendants actively concealed the defective nature of the

Class Vehicles and their engines from Plaintiff and Class Members.

72. The facts concealed or not disclosed by Defendants to Plaintiff and the Class Members are material in that a reasonable person would have considered them to be important in deciding whether or not to purchase Defendants' Class Vehicles, or to pay less for them. Had Plaintiff and other Class Members known that the Class Vehicles suffered from an excessive oil consumption defect, they would not have purchased the Class Vehicles or would have paid less for them.

73. Defendants continue to conceal the defective nature of the Class Vehicles and their excessive oil consumption defect even after Class Members began to report problems. Indeed, Defendants continue to cover up and conceal the true nature of the problem by asserting that losing quarts of oil between regularly scheduled oil changes is normal.

74. By their conduct, Defendants have engaged in unfair competition and unlawful, unfair, and fraudulent business practices.

75. Defendants' unfair or deceptive acts or practices occurred repeatedly in Defendants' trade or business, and were capable of deceiving a substantial portion of the purchasing public.

76. As a direct and proximate result of Defendants' unfair and deceptive practices, Plaintiff and the Class have suffered and will continue to suffer actual damages.

77. Defendants have been unjustly enriched and should be required to make restitution to Plaintiff and the Class pursuant to §§ 17203 and 17204 of the Business & Professions Code.

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THIRD CAUSE OF ACTION

(Asserted on Behalf of the New York Sub-Class for Violations of the
Consumer Protection From Deceptive Acts and Practices Act)
(N.Y. Gen. Bus. Law §§ 349, *et seq.*)

78. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

79. Plaintiff brings this cause of action on behalf of himself and on behalf of the New York Sub-Class against all Defendants.

80. Plaintiff and Class Members are consumers who purchased and/or leased Class Vehicles for personal, family, or household use.

81. Defendants engaged in unlawful conduct, made affirmative misrepresentations, or otherwise violated N.Y. Gen. Bus. Law §§ 349, *et seq.* Specifically, Defendants were aware that the Class Vehicles suffered from a excessive oil consumption defect that required supplemental addition of oil in quantities sometimes as high as one (1) quart per 500 miles driven for some Class Members. However, Defendants purposely failed to disclose this to Plaintiffs and Class Members during the purchase or lease of the vehicle or thereafter.

82. Defendants also engaged in unlawful conduct in violation of N.Y. Gen. Bus. Law §§ 349, *et seq.* by making knowing and intentional omissions. Defendants purposefully and knowingly failed to disclose the defect in the Class Vehicles in order to secure the sale of these vehicles at a premium price and also to mislead owners during the limited warranty period to avoid having to perform their contractual duties under the warranty.

83. Defendants did not fully and truthfully disclose to its customers the true nature of the inherent defect in the Class Vehicles, which was not readily discoverable upon purchase.

84. Defendants intended that Plaintiffs and all Class Members rely on

1 the acts of concealment and omissions, so that they would purchase the Class
2 Vehicles.

3 85. As a result of Defendants' conduct, Plaintiff and Class Members
4 have suffered an ascertainable loss. In addition to direct monetary losses
5 incurred through having to purchase high quality synthetic oil as often as one (1)
6 quart per 500 miles driven for some Class Members, Plaintiff and Class
7 Members have also suffered an ascertainable loss by receiving less than what
8 was promised.

9 86. A causal relationship exists between Defendants' unlawful conduct
10 and the ascertainable losses suffered by Plaintiffs and the Class Members. Had
11 Plaintiff and other Class Members known that the Class Vehicles suffered from a
12 excessive oil consumption defect, thus requiring the addition of substantial
13 amounts of oil between scheduled oil changes, they would not have purchased
14 the Class Vehicles or would have paid less for them. Had Plaintiff and Class
15 Members known about the oil consumption defect, they would not have
16 purchased the Class Vehicles or would have paid less for them.

17 87. As a direct and proximate result of Defendants' violations of N.Y.
18 Gen. Bus. Law §§ 349, *et seq.*, as set forth above, Plaintiff and the members of
19 the New York Sub-Class have suffered an ascertainable loss of money and are
20 therefore entitled to relief, including damages, plus triple damages, costs, and
21 attorneys' fees under section 349(h) of the New York Consumer Protection from
22 Deceptive Acts and Practices Act.

FOURTH CAUSE OF ACTION

24 (Breach of Written Warranty under the Magnuson-Moss Warranty Act, 15
25 U.S.C. § 2301 *et seq.*)

26 88. Plaintiff hereby incorporates by reference the allegations contained
27 in the preceding paragraphs of this Complaint.

28 89. Plaintiff brings this action on behalf of himself and on behalf of the

1 Nationwide Class against Defendant Volkswagen Group of America, Inc., only.

2 90. Plaintiff and the other Class Members are “consumers” within the
3 meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

4 91. Volkswagen is a “supplier” and “warrantor” within the meaning of
5 15 U.S.C. §§ 2301(4)-(5).

6 92. The Class Vehicles are “consumer products” within the meaning of
7 15 U.S.C. § 2301(1).

8 93. Volkswagen’s express warranty is a “written warranty” within the
9 meaning of 15 U.S.C. § 2301(6).

10 94. Volkswagen breached the express warranty by:

11 (d) Extending a 4-year/50,000 mile New Vehicle Limited
12 Warranty² with the purchase or lease of the Class Vehicles,
13 thereby warranting to repair or replace any part defective in
14 material or workmanship at no cost to the owner or lessee;

15 (e) Selling and leasing Class Vehicles with engines that were
16 defective in material and workmanship, requiring repair or
17 replacement within the warranty period; and

18 (f) Refusing to honor the express warranty by repairing or
19 replacing, free of charge, the engine or any of its component
20 parts and instead charging for the repair and replacement
21 parts.

22 95. Volkswagen’s breach of the express warranty has deprived the
23 Plaintiff and the other Class members of the benefit of their bargain.

24 96. The amount in controversy of the Plaintiff’s individual claims meet
25 or exceeds the sum or value of \$25,000. In addition, the amount in controversy
26 meets or exceeds the sum or value of \$50,000 (exclusive of interests and costs)

27 28 ² The express warrant terms with respect to the New Vehicle Limited
Warranties for other Class Vehicles are substantially similar.

1 computed on the basis of all claims to be determined in this suit.

2 97. Volkswagen has been afforded a reasonable opportunity to cure its
3 breach of written warranty, including when Plaintiff and other Class Members
4 brought their vehicles in for diagnoses and repair of their engines.

5 98. As a direct and proximate cause of Volkswagen's breach of written
6 warranty, Plaintiff and Class members sustained damages and other losses in an
7 amount to be determined at trial. Volkswagen's conduct damaged Plaintiff and
8 Class Members, who are entitled to recover actual damages, consequential
9 damages, specific performance, diminution in value, costs, attorneys' fees,
10 and/or other relief as appropriate.

11 FIFTH CAUSE OF ACTION

12 (Breach of Express Warranty under Cal. Comm. Code § 2313)

13 99. Plaintiff hereby incorporates by reference the allegations contained
14 in the preceding paragraphs of this Complaint.

15 100. Plaintiff brings this cause of action against Volkswagen Group of
16 America, Inc., on behalf of himself and on behalf of the Nationwide Class or, in
17 the alternative, California sub-class.

18 101. Volkswagen provided all purchasers and lessees of the Class
19 Vehicles with the express warranty described herein, which became part of the
20 basis of the bargain. Accordingly, Volkswagen's express warranty is an express
21 warranty under California law.

22 102. The 2.0 liter turbocharged engines and their component parts were
23 manufactured and/or installed and/or distributed by Volkswagen in the Class
24 Vehicles and are covered by the express warranty.

25 103. Volkswagen breached the express warranty by:

- 1 a. Extending a 4-year/50,000 mile New Vehicle Limited
- 2 Warranty³ with the purchase or lease of the Class Vehicles,
- 3 thereby warranting to repair or replace any part defective in
- 4 material or workmanship at no cost to the owner or lessee;
- 5 b. Selling and leasing Class Vehicles with engines that were
- 6 defective in material and workmanship, requiring repair or
- 7 replacement within the warranty period; and
- 8 c. Refusing to honor the express warranty by repairing or
- 9 replacing, free of charge, the engines or any of their
- 10 component parts affected by the excessive oil consumption
- 11 defect, and instead charging for the repair and replacement
- 12 parts.

13 104. Plaintiff and the Class Members (or the prior owners of their Class
 14 Vehicles) notified Volkswagen of the breach within a reasonable time and/or
 15 were not required to do so. Volkswagen was also on notice of the excessive oil
 16 consumption defect from the complaints and service requests for excessive oil
 17 consumption they received from Class Members and their dealers.

18 105. As a direct and proximate cause of Volkswagen's breach, Plaintiff
 19 and the other Class Members have suffered damages and continue to suffer
 20 damages, including economic damages at the point of sale or lease, *i.e.* the
 21 difference between the value of the vehicle as promised and the value of the
 22 vehicle as delivered. Additionally, Plaintiff and the other Class Members either
 23 have incurred or will incur economic damages related to the excessive oil
 24 consumption defect described herein.

25 106. Plaintiff and the other Class Members are entitled to legal and
 26 equitable relief against Volkswagen, including damages, consequential damages,

27 28 ³ The terms of the New Vehicle Limited Warranties for Class Vehicles are
 substantially similar.

1 specific performance, attorneys' fees, costs of suit, and other relief as
 2 appropriate.

3 **SIXTH CAUSE OF ACTION**

4 (Violations of Express Warranty Pursuant to N.Y. U.C.C. Law §§ 2-313.)

5 107. Plaintiff hereby incorporates by reference the allegations contained
 6 in the preceding paragraphs of this Complaint.

7 108. Plaintiff brings this cause of action against Volkswagen Group of
 8 America, Inc., on behalf of himself and on behalf of the New York Sub-Class.

9 109. Volkswagen provided all purchasers and lessees of the Class
 10 Vehicles with the express warranty described herein, which became part of the
 11 basis of the bargain. Accordingly, Volkswagen's express warranty is an express
 12 warranty under the state law express warranty statutes referred to herein.

13 110. The 2.0 liter turbocharged engines and their component parts were
 14 manufactured and/or installed and/or distributed by Volkswagen in the Class
 15 Vehicles and are covered by the express warranty.

16 111. Volkswagen breached the express warranty by:

- 17 d. Extending a 4-year/50,000 mile New Vehicle Limited
- 18 Warranty⁴ with the purchase or lease of the Class Vehicles,
 19 thereby warranting to repair or replace any part defective in
 20 material or workmanship at no cost to the owner or lessee;
- 21 e. Selling and leasing Class Vehicles with engines that were
 22 defective in material and workmanship, requiring repair or
 23 replacement within the warranty period; and
- 24 f. Refusing to honor the express warranty by repairing or
 25 replacing, free of charge, the engines or any of their
 26 component parts affected by the excessive oil consumption

27 ⁴ The terms of the New Vehicle Limited Warranties for Class Vehicles are
 28 substantially similar.

defect, and instead charging for the repair and replacement parts.

112. Plaintiff and Class Members (or the prior owners of their Class Vehicles) notified Volkswagen of the breach within a reasonable time and/or were not required to do so. Volkswagen was also on notice of the excessive oil consumption defect from the complaints and service requests for excessive oil consumption they received from Class Members at their dealers.

113. As a direct and proximate cause of Volkswagen's breach, Plaintiff and the other Class Members have suffered damages and continue to suffer damages, including economic damages at the point of sale or lease, *i.e.* the difference between the value of the vehicle as promised and the value of the vehicle as delivered. Additionally, Plaintiff and the other Class Members either have incurred or will incur economic damages related to the excessive oil consumption defect described herein.

114. Plaintiff and the other Class Members are entitled to legal and equitable relief against Volkswagen, including damages, consequential damages, specific performance, attorneys' fees, costs of suit, and other relief as appropriate.

115. The New York Sub-Class: Volkswagen's practices, as alleged, were in violation of N.Y. U.C.C. Law §§ 2-313.

RELIEF REQUESTED

116. Plaintiff, on behalf of himself, and all others similarly situated, requests the Court to enter judgment against Defendants, and accordingly, request the following:

- (a) An order certifying the proposed Class and Sub-Classes, designating Plaintiff as named representative of the Class, and designating the undersigned as Class Counsel;
- (b) A declaration that Defendants are financially responsible for

notifying all Class Members about the defective nature of the Class Vehicles and their engines;

- (c) An order enjoining Defendants from further deceptive distribution, sales, and lease practices with respect to its Class Vehicles, and to remove and replace Plaintiff and Class Members' engines with a suitable alternative product and repair all other damages to the Class Vehicles caused by the defective engines;
- (d) An award to Plaintiff and the Class of compensatory, actual exemplary, and statutory damages, including interest, in an amount to be proven at trial, except that for now, Plaintiff seeks only equitable and injunctive relief with respect to his claims under California's Consumer Legal Remedies Act, California Civil Code section 1750 *et seq.*;
- (e) A declaration that Defendants must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale or lease of its Class Vehicles, or make full restitution to Plaintiff and Class Members;
- (f) An award of attorneys' fees and costs, as allowed by law;
- (g) An award of attorneys fees and costs pursuant to California Code of Civil Procedure § 1021.5;
- (h) An award of pre-judgment and post-judgment interest, as provided by law;
- (i) Leave to amend the Complaint to conform to the evidence produced at trial; and
- (j) Such other relief as may be appropriate under the circumstances.

111

DEMAND FOR JURY TRIAL

2 117. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff
3 demands a trial by jury of any and all issues in this action so triable of right.

5 || Dated: May 1, 2012

Respectfully submitted,
LAW OFFICES OF MARK YABLONOVICH

By:

**Neda Roshanian
Michael Coats
Attorneys for Plaintiff Ali Asghari**

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